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Federal Communications Commission
Office of the Secretary

March 24, 2004

Via Electronic Delivery

Marlene H. Dortch, Secretary
Office of Managing Director
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Attention: Wireline Competition Bureau

Re. NPCR, Inc. d/b/a Nextel Partners
Supplement to Petition for ETC Designation in the State of Florida
CC Docket No. 96-45, DA 03-4113

Dear Secretary Dortch:

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its undersigned counsel, hereby submits a "Supplement" to its above-captioned Petition for Designation as an ETC in the State of Florida, filed on September 16, 2003 in CC Docket No. 96-45 ("Petition") in response to the Commission's recent Memorandum Opinion and Order in the *Virginia Cellular* proceeding.¹ As supplemented herein, Nextel Partners' Petition presents no new or novel issues for consideration and therefore may be decided fully

¹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. January 22, 2004) ("*Virginia Cellular Order*")

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within the decisional framework established by the Commission in the *Virginia Cellular Order*. Based on the record of this proceeding, the Commission should grant Nextel Partners' Petition expeditiously.

Nextel Partners hereby supplements its Petition with the following information and commitments:

1. Adoption of the CTIA Consumer Code for Wireless Service

The wireless industry is a competitive industry, where market forces have been allowed to shape customer service. The Commission has recognized, however, that the CTIA Consumer Code for Wireless Services (the "CTIA Consumer Code") contains important customer protections, and that the adoption of those standards demonstrates a wireless ETC's commitment to customer service and service quality consistent with the public interest.² Nextel Partners will adopt the CTIA Consumer Code where it is designated as an ETC. A copy of the CTIA Consumer Code is attached as "**Exhibit 1**" hereto. Nextel Partners believes that that its formal adoption of and compliance with the CTIA Consumer Code will allow Nextel Partners to further enhance its industry-leading reputation for customer satisfaction and retention.

² See *Virginia Cellular Order* at ¶ 30.

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2. Annual Consumer Complaint Reporting

In the *Virginia Cellular Order*, the Commission also required the annual reporting of consumer complaints per 1000 handsets.³ Nextel Partners commits to providing the Commission and the Universal Service Administrative Company (“USAC”), on an annual basis, with a report of the number of consumer complaints per 1,000 handsets for the preceding year. This “Annual Consumer Complaint Report” will be filed with USAC and the Commission on October 1 of each year, beginning with the year in which Nextel Partners is designated as an ETC in Florida. Together with its Annual Consumer Complaint Report, Nextel Partners will also provide the Commission with the name, address and telephone number of a point of contact to address any customer service or service quality complaint received by the Commission. The designated contact person will have access to customer account information and the authority to resolve customer service issues.

3. Service Provisioning Commitment

To provide assurance to the Commission that Nextel Partners will respond to reasonable requests for service within its designated service territory, upon designation as an ETC in Florida, Nextel Partners will implement the following steps, which were presented by Virginia Cellular and accepted by the Commission:⁴

³ See *Virginia Cellular Order* at ¶ 30.

⁴ See Virginia Cellular, LLC November 12, 2003 letter amendment in CC Docket

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1. If a request comes from a potential customer within its existing network coverage, Nextel Partners will provide service immediately using customer equipment selected by the customer. In practice, if Nextel Partners receives an Internet or phone order for a handset and service plan prior to 4:00 p.m., the phone is delivered to the customer by overnight mail the following morning.

2. If a potential customer within Nextel Partners' designated service territory cannot be served by existing network facilities, Nextel Partners will take a series of steps in response to the request for service:

First, Nextel Partners will determine whether the potential customer's equipment can be modified or replaced to provide service in the requested location.

Second, Nextel Partners will determine whether the customer could be provided with other network equipment (booster, antenna, or 3 watt unit) to enable provision of service in the requested location.

Third, Nextel Partners will determine whether adjustments at the cell site nearest the requested location can be made to enable provision of service.

Fourth, Nextel Partners will determine whether there are any other adjustments to either the network or the customer facilities that can be made to provide service.

Fifth, Nextel Partners will determine whether it can offer resold service from another carrier that has facilities available to provide service in the requested location.

Sixth, Nextel Partners will determine whether additional network infrastructure (additional cell site, extender or repeater) could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.

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3. If, after all of the foregoing steps have been completed, Nextel Partners determines that the customer cannot be served, Nextel Partners will so notify the customer and provide the Commission and USAC with an annual report of how many requests for service could not be filled.

4. Nextel Partners' "Annual Report of Unfilled Service Requests" would be filed with the Commission and USAC on each October 1, beginning in the year in which Nextel Partners obtains designation as an ETC in Florida. The Commission would retain jurisdiction and authority to consider whether Nextel Partners has responded appropriately to a request for service.

The formalization of this process will benefit consumers and provide the Commission with the requisite assurance that that Nextel Partners will thoroughly and systematically respond to reasonable requests for service within its designated service territory.

4. Use of Support and Progress Meeting Buildout Goals

a. Construction Plans

The Commission's rules provide a mechanism for ensuring that all ETCs are using support for the purposes for which that support is intended. Nextel Partners will comply with all applicable rules addressing those standards. In accordance with the Commission's *Virginia Cellular Order*, Nextel Partners hereby submits specific Construction Plans for its designated service territory in Florida to demonstrate its projected use of USF High Cost Program funds to improve its network facilities, and reach out to areas that it does not currently serve. Nextel Partners' Construction Plans for Florida are set forth in **Exhibit 2** hereto. The Construction Plans reflect Nextel Partners'

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2004 projected capital budget for the Designated Areas, and include site modification and switch capital expenses. Nextel Partners' Construction Plans demonstrate that its projected budget for construction in its Designated Areas in Florida will far exceed the estimated amount of USF subsidies it will receive upon grant of ETC status.

b. Annual Progress Report

As the Commission is aware, consumer demand may shift over time, requiring the planned deployment of cell sites and other network equipment to be adjusted. To track such adjustments, and to detail its "progress in meeting its build-out plans in the service areas it is designated as an ETC,"⁵ Nextel Partners will submit information annually to the Commission and USAC. The Commission recognized that this commitment would provide important information that could be used to evaluate an ETC's progress towards meeting its obligation to provide service throughout a service area.⁶ Nextel Partners "Annual Construction Progress Report" will be filed with the Commission and USAC on October 1 of each year, commencing with the year in which Nextel Partners is designated an ETC in Florida.

5. Advertising Commitment

Nextel Partners advertises and informs potential customers of its services and products by means of newspapers, television, radio, and its Internet website. Upon

⁵ See *Virginia Cellular Order* at ¶ 46.

⁶ See *Virginia Cellular Order* at ¶ 30.

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designation as an ETC in Florida, Nextel Partners will continue to advertise the availability of its services, including all USF supported services, throughout its ETC designated service territory, and will additionally provide notices for posting at local unemployment, social security and welfare offices. Nextel Partners will advertise the availability and terms and conditions of Lifeline and Linkup programs so that eligible consumers can determine whether they are eligible to receive discounts and/or subsidies from these programs in conjunction with their Nextel Partners service. Nextel Partners will also locally publicize the construction of new facilities and relevant expansions of service coverage, so that consumers may be advised when Nextel Partners service is improved, or becomes available to customers in their localities.⁷

6. Public Interest

As mentioned in Nextel Partners' Petition, grant of ETC status to Nextel Partners will provide the benefit of increased competitive choice to customers in Florida.⁸ Consistent with the Commission's *Virginia Cellular Order*, Nextel Partners' state-of-the-art advanced digital wireless service allows customers access to telecommunications and data services in situations "where they do not have access to a wireline telephone."⁹ In fact, the Commission specifically recognized in the *Virginia Cellular Order* the crucial

⁷ See *Virginia Cellular Order* at ¶ 25.

⁸ See Nextel Partners Petition at § IV; see also *Virginia Cellular Order* at ¶ 28.

⁹ See *Virginia Cellular Order* at ¶ 29.

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value of *mobility* that a wireless ETC can bring to rural, insular and high cost areas.¹⁰ Nextel Partners' mobile wireless service will assist consumers in rural areas by providing a telecommunications link as they drive significant distances to places of employment, schools, and other community locations.¹¹ Moreover, the wireless access to emergency services represented by Nextel Partners' service will help to "mitigate the unique risks of geographic isolation" associated with living in rural areas.¹²

Nextel Partners also offers a significantly larger local calling area than any of the incumbent carriers it competes against; accordingly, Nextel Partners' customers will be subject to fewer toll charges.¹³ Nextel Partners attaches as **"Exhibit 3"** hereto a map of its local calling area for the State of Florida. As can be seen, Nextel Partners' local calling area for Florida covers the entire state, including the southern half of the State of Alabama. This local calling area is far larger than local calling areas typically offered by rural ILECs.

¹⁰ *Id* See also Separate Statement of Chairman Michael K. Powell.

¹¹ *Id*

¹² *Id*

¹³ See Nextel Partners' Petition at § IV See also *Virginia Cellular Order* at ¶ 29

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Finally, consistent with the Commission's *Virginia Cellular Order*, grant of Nextel Partners' Petition will not significantly affect the size of the Universal Service Fund's High Cost Program.¹⁴

Conclusion

Reliance on Nextel Partners' commitments and representations made in its Petition for Designation and in this Supplement is reasonable and consistent with the public interest, the requirements of the Communications Act of 1934, as amended, and applicable case precedent. Nextel Partners' Petition for Designation in Florida does not present any new or novel issues that were not addressed in the Commission's *Virginia Cellular Order*, and Nextel Partners has provided all of the specific commitments and information required by the Commission in that decision. Accordingly, Nextel Partners requests that the Commission grant its Petition on an expedited basis.

¹⁴ See *Virginia Cellular Order* at ¶ 31. Nextel Partners estimates that grant of its Petition will make Nextel Partners eligible to receive approximately \$480,000 in USF High Cost Support on an annual basis in its designated service territory in Florida. The USF High Cost Program disbursed approximately \$2.98 Billion in calendar year 2002. See USAC Annual Report for 2002.

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Respectfully submitted,

NPCR, Inc. d/b/a Nextel Partners

By /signed/

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EXHIBIT 1

CTIA Consumer Code for Wireless Services

EXHIBIT 2

Construction Plans for Florida

Nextel Partners
Construction Plan for Florida Designated Areas

<u>Location</u>	<u>Description</u>	<u>Capital Amount</u>
Pensacola NAS	New Site	\$ 172,000
Brownsdale	New Site	116,000
Berrydale	New Site	116,000
Tyndall AFB	New Site	142,000
Tyndall AFB	New Site	144,000
Eastpoint	New Site	168,000
Eastpoint	New Site	149,000
Apalachicola	New Site	168,000
Perry	New Site	120,000
Perry	New Site	93,000
Perry	New Site	139,000
Athena	New Site	93,000
Bellevue	Site Modification	31,000
Nine Mile	Add 2 sectors	74,000
Pensacola Switch	Switch Capital for 12 new sites	51,000
		<hr/> \$1,776,000

As set forth above, Nextel Partners' projected budget for construction in the Designated Areas is approximately USD \$1.8 Million for improvements projected for completion in 2004. The improvements projected for 2004 include 12 new cell sites, switching equipment, site modifications and the addition of two new sectors in the specified locations that are intended to expand Nextel Partners' capability to serve customers within the Designated Areas. These expenses far exceed the estimated USD \$40,000 in monthly USF subsidies that Nextel Partners may receive in Florida when designated as an ETC.

EXHIBIT 3

Nextel Partners' local calling area map for Florida



CTIA

Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan, (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan, (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply, (e) the charges for excess or additional minutes, (f) per-minute long distance charges or whether long distance is included in other rates, (g) per-minute roaming or off-network charges, (h) whether any additional taxes, fees or surcharges apply, (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier, (j) whether a fixed-term contract is required and its duration, (k) any activation or initiation fee, and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

THREE

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

FOUR

ALLOW A TRIAL PERIOD FOR NEW SERVICE

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

FIVE

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

In advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees, (b) monthly access fees or base charges, (c) any required contract term, (d) early termination fees, (e) the terms and conditions related to receiving a product or service for "free," (f) the times of any peak and off-peak calling periods, (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas, (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim, (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term, (j) whether any additional taxes, fees or surcharges apply, and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

SIX

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal, state or local governments. Carriers will not label cost recovery fees or charges as taxes.

S E V E N

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee

E I G H T

PROVIDE READY ACCESS TO CUSTOMER SERVICE

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

N I N E

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

T E N

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.